



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

AUG 12 1996

Indian Health Service  
Rockville MD 20857

SGM 96-1

TO: Area Directors  
Associate Directors

FROM: Director

SUBJECT: Current Restrictions on Use of Indian Health Service  
Funds for Abortions

This memorandum is intended to clarify current Indian Health Service (IHS) policy on the use of IHS funds for abortions.

On January 27, 1982, the IHS published regulations imposing restrictions on the use of IHS funds for abortions (47 Federal Register 4018, codified at the Code of Federal Regulations (CFR), Title 42 Section 36.51, et seq). These regulations allow the use of IHS funds for abortions only when a physician certifies that the life of the mother would be endangered if the fetus were carried to term (42 CFR 36.54). These regulations were based on the then current "Hyde Amendment" to the Department of Health and Human Services (HHS) appropriation. The "Hyde Amendment" restricts the circumstances under which HHS appropriations may be used for abortion services. The IHS regulation was published to make the agency's policy on abortions consistent with other agencies funded under the HHS appropriations. This action was necessary because IHS funds are appropriated through the Department of Interior and Related Agencies Appropriation and do not contain the Hyde Amendment language.

Section 806 of the Indian Health Care Improvement Act makes the restrictions on the use of HHS appropriations for the performance of abortions applicable to the IHS. Section 806 states as follows:

"Any limitation on the use of funds contained in an Act providing appropriations for the Department of Health and Human Services for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Indian Health Service."

The HHS appropriation acts for fiscal years 1994, 1995, and 1996 expand the circumstances under which Federal funds may be used for abortion services as follows:

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"None of the funds appropriated under this act shall be expended for any abortion except \_when it is made known to the federal entity or official to which funds are appropriated under this act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest."

Thus, the current IHS regulation is inconsistent with the current statutory direction as it does not contain the exception for rape or incest.

The statutory language in section 806 overrides the current IHS regulations. The IHS is authorized to expend funds consistent with the current HHS appropriations language. Thus, IHS appropriations may be used to pay for or otherwise provide for an abortion when it is necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.

The following guidelines should be used to determine those circumstances where it would be appropriate for the IHS to expend its appropriations for abortion services and describes the information necessary to certify that the performance of the abortion is appropriate and consistent with Federal law.

Federal funds may not be used to pay for or otherwise provide for elective induced abortions unless:

1. A physician has found and so certified in writing to the appropriate tribal or urban Indian health program, service unit, or Area Director that "on the basis of my professional judgement the life of the mother would be endangered if the fetus were carried to term" (the certification must contain the name and address of the patient); or
2. The pregnancy is the result of an act of rape or incest and the following conditions are met:
  - A. An IHS-operated program, tribal health program operated pursuant to Public Law 93-638, or an urban Indian health program operated pursuant to Title V receives signed documentation from a law enforcement agency, a health care facility, or a health care program stating:
    - (1) That the woman requesting the abortion has reported she was a victim of rape or incest;
    - (2) The date on which the episode of rape or incest occurred;
    - (3) The date on which the report was made, which must have been within 60 days of the date on which the episode of rape or incest occurred;

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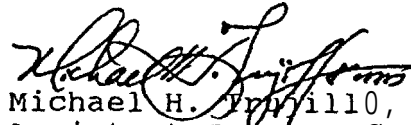
- (4) The name and address of the victim and the name and address of the person making the report (if different from the victim); and
- (5) That the report included the signature of the person who reported the incident.

B: The incident in question meets the definition of rape or incest as defined by law in the State or tribal jurisdiction where the incident was reported to have occurred.

Because the majority of medical procedures during pregnancy, including abortions, are provided to IHS beneficiaries by non-IHS providers, Federal funds may be authorized to pay such providers to perform medical procedures, including abortions, when necessary to save the life of the mother or when the pregnancy was the result of an act of rape or incest, provided the incident is documented as described above. Authorization of such Federal funds must be made pursuant to the IHS contract health services (CHS) regulations at 42 CFR 36.21, et. seq.

The authorization of or performance of abortions under this policy must also be consistent with the relevant sections of the Indian Health Manual, Part 3, Chapter 13, "Maternal and Child Health," and the IHS policy (as in other family planning circumstances) to comply with State law regarding the provision of services to minors without parental consent.

These guidelines will remain in effect as long as the HHS appropriations' restrictions on the use of Federal funds for the performance of abortions remains the same. In the event that the HHS appropriations' restrictions are modified, the IHS policy as to the use of its appropriations for the performance of abortions will be modified to be consistent with such restrictions.

  
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